

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
BARSTOW FIELD OFFICE
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**Decision Record
and**

Finding of No Significant Impact

for

**Newberry Rodman
Temporary Motorized Vehicle Use Closure
and Vehicle Routes Identification, San Bernardino County, California**

Prepared by:

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Barstow Field Office**

Environmental Assessment CA-680-01-61

Approved by _____
Tim Read, Manager Date
Barstow Field Office

DECISION RECORD

for

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and Vehicle Routes Identification, San Bernardino County, California**

Environmental Assessment CA-680-01-61

DECISION

Based on review of the Environmental Assessment (CA-680-01-61) (EA) and my Finding of No Significant Impacts, my decision is to approve the temporary closure to motorized vehicle use of approximately 81,500 acres. The closed areas are within the boundaries of the California Desert Conservation Area (CDCA).

I have determined it necessary to use my authority under 43 Code of Federal Regulations (CFR) 8341.2(a) to close the identified area to vehicle use in order for BLM to provide additional protection for threatened and endangered species listed under the Endangered Species Act (ESA). Therefore, this restriction will take effect immediately and will remain in effect until a record of decision is signed for the West Mojave Plan, which is expected to be signed in June 2003. Certain exceptions apply to government vehicles on official business.

Implementation of the temporary restriction will include signing and maintaining Open routes as well as preparation and distribution of a brochure to explain the need for the closure, illustrate which routes are available for use, present an appropriate land use ethic, and explain how the public may participate in the formal route designation process. Implementation will also include enhanced public outreach, visitor contact, and law enforcement above current levels. Sign maintenance, and visitor contact and law enforcement patrols will be regularly scheduled. The purpose of visitor service contacts will be to achieve voluntary compliance of use of the signed routes. Additionally, an effort will be made to develop a force of volunteers that utilize this area to help with public outreach and sign and trail maintenance.

RATIONALE

This decision is necessary because desert tortoise populations throughout the California Desert have been reduced considerably over the last several years as a result of a variety of causes. Desert tortoise experts testified in July 2001 as to the substantial decline in the tortoise population within the CDCA and the need for affirmative action to protect and stabilize the remaining population (Blincoe, et al. v. BLM, CA-690-01-02; CA-690-01-03, CA-690-01-04, CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision dated August 24, 2001,

p.20 et seq)). The desert tortoise is federally listed as a threatened species by the Fish and Wildlife Service (FWS) in accordance with the Endangered Species Act (ESA). By taking this interim closure action, BLM will provide additional protection for the threatened desert tortoise and its habitat while a long-term management strategy is developed. BLM is currently developing such strategy as part of the West Mojave plan which is scheduled for completion in the June 3, 2003.

BLM recognizes that the interim closure will displace some OHV users. OHV users who utilized the area to get away from the crowds, will be likely to utilize other areas. However, the closure will not have a significant negative impact on recreation since the closure is temporary and other areas such as Johnson Valley and Stoddard Valley Open Areas can fully accommodate the displaced users.

43 CFR 8341.2(a) provides that the authorized officer shall immediately close an area when he determines that OHV use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, other authorized uses, or other resources. Because tortoise populations in the CDCA are in substantial decline as a result of OHV and other impacts, and the issuance of a record of decision on the West Mojave plan is not anticipated until June 2003, BLM concludes immediate closure under 43 CFR 8341.2(a) is necessary. There is a considerable body of literature that indicates OHV use and related recreational activities can have adverse effects upon the tortoise (references cited list; see also EA references list).

The Newberry Rodman Critical Habitat Unit in the Western Mojave Recovery Unit for the desert tortoise (*Gopherus agassizii*), a State and federally listed as threatened species. The numerous OHV roads/trails in the area impact the constituent elements (cover from a fairly contiguous shrub canopy with moderate interspaces, uncompacted soils suitable for burrowing, a healthy plant community with a low amount of non-native species and low to moderate diversity, and a small amount of anthropogenic induced disturbances) necessary for desert tortoise habitat.

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM. The Center alleged the BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the FWS on the effects of adoption of the CDCA Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, BLM entered into five stipulated agreements, including the stipulation which includes this closure.

Although precipitated by the Center's lawsuit, BLM has initially reviewed its current management of the Newberry Rodman area under the CDCA plan as it relates to desert tortoise. As an interim measure, BLM implements this closure to provide additional protection to the tortoise pending implementation of the yet to be completed West Mojave plan. By implementing this interim closure, BLM ensures compliance with sections 7(a) and 7 (d) of the ESA. Section

7(a)(1) of the ESA provides that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species (16 USC 1536(a)(1)). Section 7(d) of the ESA provides that after initiation of consultation under §7(a)(2), a Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA.

BLM initiated consultation with Fish and Wildlife Service (FWS) on the CDCA Plan on January 31, 2001. A Biological Opinion on the CDCA Plan is expected later this year. BLM will consult on the West Mojave plan prior to issuing decision records.

The interim closure of this area is consistent with the *California Desert Conservation Area (CDCA) Plan*, 1980, as amended. The CDCA Plan contains general and specific direction for protection listed species, such as the taking of appropriate action, including closure of routes and areas (CDCA Plan, page 82, March 1999 reprinted version).

APPEAL RIGHTS: This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR 4.21). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Accept as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied,
- (2) the likelihood of the appellant's success on the merits,
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors granting the stay.

References

Federal Register Vol 54, No. 149 pp. 32326-32331, Emergency Listing as Endangered, August 4, 1989.

Federal Register Vol 55, No. 63 pp. 12178-12190, Regular Rule-Making Listing as Threatened, April 2, 1990.

Federal Register Vol 59, No. 26 pp. 5820-5866, Critical Habitat Final Rule, February 8, 1994.

Sweitzer, Harvey C., Administrative Law Judge; Decision of August 24, 2001; Appeal of Bureau of Land Management Final Grazing Decision and Decision Record; Richard Blincoe and Blincoe Farms, et al.